

ASSEMBLY BILL

No. 700

Introduced by Assembly Member Alby

February 26, 1997

An act to amend Section 290.4 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 700, as introduced, Alby. Sex offenders: release of information.

Existing law requires the Department of Justice to compile, organize, and make available through a "900" telephone number, specified information about persons required to register as sex offenders. Although the code section authorizing the "900" telephone number program will be repealed on January 1, 1999, the "900" telephone number program itself will become inoperative on January 1, 1998.

This bill would delete the January 1, 1998, program termination date, thereby extending its operation until January 1, 1999.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 290.4 of the Penal Code is
2 amended to read:
3 290.4. (a) (1) The Department of Justice shall
4 continually compile information as described in

1 paragraph (2) regarding any person required to register
2 under Section 290 for a conviction of subdivision (b) of
3 Section 207; kidnapping, as punishable pursuant to
4 subdivision (d) of Section 208; Section 220, except assault
5 to commit mayhem; Section 243.4, provided that the
6 offense is a felony; paragraph (1), (2), (3), (4), or (6) of
7 subdivision (a) of Section 261; Section 264.1; Section 266,
8 provided that the offense is a felony; Section 266c,
9 provided that the offense is a felony; Section 267;
10 paragraph (2) of subdivision (b), subdivision (c), (d), (f),
11 (g), (i), (j), or (k) of Section 286; Section 288; paragraph
12 (2) of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of
13 Section 288a; Section 288.5; subdivision (a), (b), (d), (e),
14 (f), (g), (h) of Section 289, provided that the offense is a
15 felony; *subdivision (i)*; or (j) of Section 289; Section 647.6;
16 or the statutory predecessor of any of these offenses. This
17 requirement shall not be applied to a person whose duty
18 to register has been terminated pursuant to paragraphs
19 (6) and (7) of subdivision (d) of Section 290, or to a
20 person who has been relieved of his or her duty to register
21 under Section 290.5.

22 (2) The information shall be categorized by
23 community of residence and ZIP Code. The information
24 shall include the names and known aliases of ~~these~~
25 ~~persons~~ *the person*, photograph, a physical description,
26 gender, race, date of birth, the criminal history, and the
27 address, including ZIP Code, in which the person resides,
28 and any other information that the Department of Justice
29 deems relevant, not including information that would
30 identify the victim.

31 (3) The department shall operate a “900” telephone
32 number that members of the public may call and inquire
33 whether a named individual is listed among those
34 described in this subdivision. The caller shall furnish his
35 or her first name, middle initial, and last name. The
36 department shall ascertain whether a named person
37 reasonably appears to be a person so listed and provide
38 the caller with the information described in paragraph
39 (2), except the department shall not disclose the street
40 address or criminal history of a person listed, except to



1 disclose the ZIP Code area in which the person resides
2 and to describe the specific crimes for which the
3 registrant was required to register. The department shall
4 decide whether the named person reasonably appears to
5 be a person listed, based upon information from the caller
6 providing information that shall include (A) an exact
7 street address, including apartment number, social
8 security number, California driver's license or
9 identification number, or birth date along with additional
10 information that may include any of the following: name,
11 hair color, eye color, height, weight, distinctive markings,
12 ethnicity; or (B) any combination of at least six of the
13 above listed characteristics if an exact birth date or
14 address is not available. If three of the characteristics
15 provided include ethnicity, hair color, and eye color, a
16 seventh identifying characteristic shall be provided. Any
17 information identifying the victim by name, birth date,
18 address, or relation to the registrant shall be excluded by
19 the department.

20 (4) (A) On or before July 1, 1997, the department
21 shall provide a CD-ROM or other electronic medium
22 containing the information described in paragraph (2),
23 except the person's street address and criminal history
24 other than the specific crimes for which the person was
25 required to register, for all persons described in
26 paragraph (1) of subdivision (a), and shall distribute the
27 CD-ROM or other electronic medium on a quarterly basis
28 to the sheriff's department in each county, municipal
29 police departments of cities with a population of more
30 than 200,000, and each law enforcement agency listed in
31 subparagraph (I) of paragraph (1) of subdivision (n) of
32 Section 290. These law enforcement agencies may obtain
33 additional copies by purchasing a yearly subscription to
34 the CD-ROM or other electronic medium from the
35 Department of Justice for a yearly subscription fee. The
36 Department of Justice, the sheriff's departments, and the
37 municipal police departments of cities with a population
38 of more than 200,000 shall make, and the other law
39 enforcement agencies may make the CD-ROM or other
40 electronic medium available for viewing by the public in

1 accordance with the following. The agency may require
2 that a person applying to view the CD-ROM or other
3 electronic medium express an articulable purpose in
4 order to have access thereto. The applicant shall provide
5 identification in the form of a California driver's license
6 or California identification card, showing the applicant to
7 be at least 18 years of age, shall sign a register, which the
8 law enforcement agency is required to maintain, of
9 persons applying to view the CD-ROM or other
10 electronic medium, and shall sign a statement, on a form
11 provided by the Department of Justice, stating that the
12 applicant is not a registered sex offender, that he or she
13 understands the purpose of the release of information is
14 to allow members of the public to protect themselves and
15 their children from sex offenders, and he or she
16 understands it is unlawful to use information obtained
17 from the CD-ROM or other electronic medium to
18 commit a crime against any registrant or to engage in
19 illegal discrimination or harassment of any registrant. The
20 signed statement shall be maintained in a file in the law
21 enforcement agency's office.

22 (B) The records of persons requesting to view the
23 CD-ROM or other electronic medium are confidential,
24 except that a copy of the applications requesting to view
25 the CD-ROM or other electronic medium may be
26 disclosed to law enforcement agencies for law
27 enforcement purposes.

28 (C) Any information identifying the victim by name,
29 birth date, address, or relationship to the registrant shall
30 be excluded from the CD-ROM or other electronic
31 medium.

32 (5) (A) The income from the operation of the "900"
33 number shall be deposited in the Sexual Predator Public
34 Information Account, which is hereby established within
35 the Department of Justice for the purpose of the
36 implementation of this section by the Department of
37 Justice, including all actual and reasonable costs related
38 to establishing and maintaining the information
39 described in subdivision (a) and the CD-ROM or other
40 electronic medium described in this subdivision.

(B) The moneys in the Sexual Predator Public Information Account shall consist of income from the operation of the “900” telephone number program authorized by this section, proceeds of the loan made pursuant to Section 6 of the act adding this section, and any other funds made available to the account by the Legislature. Moneys in the account shall be available to the Department of Justice upon appropriation by the Legislature for the purpose specified in subparagraph (A).

(C) When the “900” number is called, a preamble shall be played before charges begin to accrue. The preamble shall run at least the length of time required by federal law and shall provide the following information:

(i) Notice that the caller’s telephone number will be recorded.

(ii) The charges for use of the “900” number.

(iii) Notice that the caller is required to identify himself or herself to the operator.

(iv) Notice that the caller is required to be 18 years of age or older.

(v) A warning that it is illegal to use information obtained through the “900” number to commit a crime against any registrant or to engage in illegal discrimination or harassment against any registrant.

(vi) Notice that the caller is required to have the birth date, California driver’s license or identification number, social security number, ~~or~~ address, or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person.

(vii) A statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities.

(viii) A statement that the caller should have a reasonable suspicion that a person is at risk.

(D) The Department of Justice shall expend no more than six hundred thousand dollars (\$600,000) per year from any moneys appropriated by the Legislature from the account.

(b) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who, without authorization, uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(c) The record of the compilation of offender information on each CD-ROM or other electronic medium distributed pursuant to this section shall be used only for law enforcement purposes and the public safety purposes specified in this section and Section 290. This record shall not be distributed or removed from the custody of the law enforcement agency that is authorized to retain it. Information obtained from this record shall be disclosed to a member of the public only as provided in this section or Section 290, or any other statute expressly authorizing it.

Any person who copies, distributes, discloses, or receives this record or information from it, except as authorized by law, is guilty of a misdemeanor, punishable by imprisonment in ~~the~~ a county jail not to exceed six months or by a fine not exceeding one thousand dollars (\$1,000), or by both. This subdivision shall not apply to a law enforcement officer who makes a copy as part of his or her official duties in the course of a criminal investigation, court case, or as otherwise authorized by subdivision (n) of Section 290.

Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions under Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(d) Unauthorized removal or destruction of the CD-ROM or other electronic medium from the offices of

1 any law enforcement agency is a misdemeanor,
2 punishable by imprisonment in a county jail not to exceed
3 one year or by a fine not exceeding one thousand dollars
4 (\$1,000), or both.

5 (e) (1) A person is authorized to use information
6 disclosed pursuant to this section only to protect a person
7 at risk.

8 This section shall not affect authorized access to, or use
9 of, information pursuant to, among other provisions,
10 Sections 11105 and 11105.3 of this code, Section 226.55 of
11 the Civil Code, Sections 777.5 and 14409.2 of the Financial
12 Code, Sections 1522.01 and 1596.871 of the Health and
13 Safety Code, and Section 432.7 of the Labor Code.

14 (2) Except as authorized under paragraph (1) or any
15 other provision of law, use of any of the following
16 information disclosed pursuant to this section is
17 prohibited:

18 (A) Health insurance.

19 (B) Insurance.

20 (C) Loans.

21 (D) Credit.

22 (E) Employment.

23 (F) Education, scholarships, or fellowships.

24 (G) Housing or accommodations.

25 (H) Benefits, privileges, or services provided by any
26 business establishment.

27 (3) (A) Any use of information disclosed pursuant to
28 this section for purposes other than those provided by
29 paragraph (1) of subdivision (e) or in violation of
30 paragraph (2) of subdivision (e) shall make the user liable
31 for the actual damages, and any amount that may be
32 determined by a jury or a court sitting without a jury, not
33 exceeding three times the amount of actual damage, and
34 not less than two hundred fifty dollars (\$250), and
35 attorney's fees, exemplary damages, or a civil penalty not
36 exceeding twenty-five thousand dollars (\$25,000).

37 (B) Whenever there is reasonable cause to believe
38 that any person or group of persons is engaged in a
39 pattern or practice of misuse of the "900" number in
40 violation of paragraph (2) of subdivision (e), the

1 Attorney General, any district attorney, or city attorney,
2 or any person aggrieved by the misuse of that number is
3 authorized to bring a civil action in the appropriate court
4 requesting preventive relief, including an application for
5 a permanent or temporary injunction, restraining order,
6 or other order against the person or group of persons
7 responsible for the pattern or practice of misuse. The
8 foregoing remedies shall be independent of any other
9 remedies or procedures that may be available to an
10 aggrieved party under other provisions of law, including
11 Part 2 (commencing with Section 43) of Division 1 of the
12 Civil Code.

13 (f) This section shall not be deemed to authorize the
14 publication, distribution, or disclosure of the address of
15 any person about whom information can be published,
16 distributed, or disclosed pursuant to this section.

17 (g) Community notification shall be governed by
18 subdivisions (m) and (n) of Section 290.

19 (h) The Department of Justice shall submit to the
20 Legislature an annual report on the operation of the
21 “900” telephone number required by paragraph (3) of
22 subdivision (a) on July 1, 1996, July 1, 1997, and July 1,
23 1998. The annual report shall include all of the following:

24 (1) Number of calls received.

25 (2) Amount of income earned per year through
26 operation of the “900” telephone number.

27 (3) A detailed outline of the amount of money
28 expended and the manner in which it was expended for
29 purposes of this section.

30 (4) Number of calls that resulted in an affirmative
31 response and the number of calls that resulted in a
32 negative response with regard to whether a named
33 individual was listed pursuant to subdivision (a).

34 (5) Number of persons listed pursuant to subdivision
35 (a).

36 (6) A summary of the success of the “900” telephone
37 number program based upon selected factors.

38 (i) ~~The “900” telephone number program authorized~~
39 ~~by this section shall terminate operation on January 1,~~
40 ~~1998.~~

1 ~~(j)~~ Law enforcement agencies, employees of law
2 enforcement agencies, and state officials shall be immune
3 from liability for good faith conduct under this section.

4 ~~(k)~~

5 (j) On or before July 1, 2000, the Department of Justice
6 shall make a report to the Legislature concerning the
7 changes to the operation of the “900” telephone number
8 program made by the amendments to this section by
9 ~~Assembly Bill 1562 of the 1995-96 Regular Session of the~~
10 ~~Legislature Chapter 908 of the Statutes of 1996.~~ The
11 report shall include all of the following:

12 (1) Number of calls received by county.

13 (2) Number of calls that resulted in an affirmative
14 response and the number of calls that resulted in a
15 negative response with regard to whether a named
16 individual was listed pursuant to subdivision (a).

17 (3) Number of persons listed pursuant to subdivision
18 (a).

19 (4) Statistical information concerning prosecutions of
20 persons for misuse of the “900” telephone number
21 program, including the outcomes of those prosecutions.

22 (5) A summary of the success of the “900” telephone
23 number based upon selected factors.

24 ~~(l)~~

25 (k) The registration and public notification provisions
26 of this section are applicable to every person described in
27 these sections, without regard to when his or her crimes
28 were committed or his or her duty to register pursuant to
29 this section arose, and to every offense described in these
30 sections, regardless of when it was committed.

31 ~~(m)~~

32 (l) This section shall become operative on July 1, 1995,
33 and shall become inoperative on January 1, 1999, and as
34 of that date is repealed unless a later enacted statute,
35 which becomes effective on or before January 1, 1999,
36 deletes or extends the dates on which it becomes
37 inoperative and is repealed.